THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 35843 of 1998

Date: 22.06.2006
Between:

M.A. Khader Khan.

… Petitioner

and

The Andhra Pradesh Administrative Tribunal, Hyderabad and two others.

…

Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 35843 of 1998

JUDGMENT: (Per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by order of the A.P. Administrative Tribunal, in O.A.5315 of 1996 dated 12.3.1998, the present writ petition is filed. During the pendency of this writ petition, the petitioner died and consequently his legal representatives were brought on record by order in W.P.M.P.24354 of 2002 dated 22.6.2006.

The petitioner was initially employed in the armed forces on 6th October, 1936 and after rendering military service for sixteen years, he retired from service on 01.01.1952. He was subsequently engaged as a contingent night watchman at the Govt. hospital, sultanbazaar from 7.2.1967. His services were regularized as Class IV employee on 1.4.1987 and he continued in the said post till he attained the age of superannuation and retired from service on 31.10.1989. Claiming to have his military services included, for the purpose grant of pension, the petitioner approached the A.P. Administrative Tribunal. The Tribunal by order in O.A.5315 of 1996 dated 12.3.1998, relying on Rule 7 of the Revised Pension Rules, 1980 that a government servant is not entitled to earn two pensions in the same service except as provided under Rule 19 which provides that a government servant who having retired on a superannuation pension or retiring pension is subsequently reemployed shall not be entitled to separate pension or gratuity for the period of his re-employment, held that his previous military service would not enure to his benefit on his reemployment in another service or post and rejected his request for grant of pension. The Tribunal also held that the petitioner herein had not exercised his option to take pensionary benefits wholly as a member of the civil service, that he was still drawing

military pension and was therefore entitled to claim only benefits, other than regular pension, admissible to him.

Sri Khasim Saheb, learned counsel appearing on behalf of Sri S.A.Mynoddin, learned counsel for the petitioner, would submit that even if the petitioner herein was not entitled to have his military service reckoned for the purpose of being granted pension, for the service rendered by him in the service of the State Government, he would nonetheless be entitled for pension reckoning his service from the date of his initial appointment as a contingent night watchman on 7.2.1967 till he attained the age of superannuation on 31.10.1989. Learned Counsel would place reliance on G.O.Ms.No.156, Finance & Planning (FW-Pen.I) Department dated 29.4.1983, whereunder the Government, taking into consideration the hardship which would be caused to low paid employees if the benefit of their past service was not reckoned for the purpose of pension and also as a social security measure, ordered that the pre-absorption service of full time contingent employees, who were absorbed in government service against posts of full time contingent employees converted into last grade posts, be counted for purposes of pension in combination with subsequent government service in relaxation of Article 361 of the Civil Service Rules.

Learned Government Pleader would submit however that no employee is entitled to receive two pensions and Rule 19 of the A.P. Revised Pension Rules disentitles the petitioner from claiming pension, that in any event, it is only the service put in by the petitioner herein from the date of his absorption i.e., from 1.4.1981 which could be reckoned as service for the purpose of pension and since the petitioner had put in only 8 years of service

from 1.4.1981 till he attained the age of superannuation on 31.10.1989, he was not entitled to claim pension.

Rule 19 of the A.P. Revised Pension Rules reads thus:

"**19. Counting of military service rendered before civil employment:-**

(1) A Government servant who is re-employed in a civil service or post before attaining the age of superannuation and who, before such re-employment, had rendered regular military service after attaining the age of eighteen years, may, on his regular appointment to a civil service or post, opt either—

(a) to continue to draw the military pension or retain gratuity received on discharge from military service, in which case his former military service shall not count as qualifying service; or

(b) to refund the pension or gratuity and count the previous military service as qualifying service, in which case the service so allowed to count shall be restricted to a service within or outside the employees unit or department in India or elsewhere, which is paid from the Consolidated Fund of India or for which pensionary contribution has been received by the Government.

(2) (a) The option under sub-rule (1) shall be exercised within six months of the date of issue of the order of regular appointment to a civil service or post on re-employment, or if the Government servant is on leave on that day, within three months of his return from leave, whichever is later.

(b) If no option is exercised within the period referred to in clause (a), the Government servant shall be deemed to have opted for clause (a) of sub-rule (1).

(3) (a) A Government servant who opts for clause (b) of sub-rule (1) shall be required to refund the pension, bonus or gratuity received in respect of his earlier military service, in monthly instalments not exceeding thirty-six in number, the first instalment beginning from the month following the month in which he exercised the option.

(b) The right to count previous service a qualifying service shall not revive until the whole amount has been refunded.

(4) In the case of a Government servant who, having elected to refund the pension, bonus or gratuity, dies before the entire amount is refunded, the unrefunded amount of pension or gratuity shall be adjusted against the death-cum-retirement gratuity which may become payable to his

family.

(5) When an order is passed under this rule allowing previous regular military service to count as part of the service qualifying for civil pension, the order shall be deemed to include the condonation of interruption in service, if any, in the military service and between the military and civil services."

Rule 7(1), of the A.P. Revised Rules, prohibits a government servant from earning two pensions in the same service or post at the same time or by the same continuous service. In view of the embargo, under Rule 7(1), the petitioner would not be entitled to claim inclusion of the military service rendered by him earlier. The prohibition under Rule 7(2) is only with regards service rendered under the State Government and not the earlier military service and as such Rule 7(1) would not preclude the petitioner herein from claiming pension for the service rendered by him under the State Government, merely because he is receiving pension for his earlier military service.

Under Rule 19(1), a government servant who is re-employed in a civil service or post before attaining the age of superannuation and who before such re-employment, had rendered regular military service after attaining the age of eighteen years, may, on his regular appointment to a civil service or post opt either to continue to draw the military pension or retain gratuity received on discharge from military service in which case his former military service shall not count as qualifying service. Since the earlier military service rendered by the petitioner is not being sought to be included as qualifying service, for grant of pension for services rendered under the State Government, the embargo under Rule 19(1)(a) would also not disentitle the petitioner from

claiming pension.

A similar view has been in **Ex.Havildar, Dharam Singh v. Union of India**[1] wherein the Delhi High Court held thus:

"…….. A reading of the aforesaid rule would show that an ex-serviceman who is drawing military service pension may opt either to draw the military pension or retain gratuity received on discharge from military service or opt to cease to draw his pension, refund the same and get the period served in military service counted as qualifying period in civil employment. If an ex-serviceman opts to cease to draw his pension, such a situation would pose no difficulty. Then his military pension would be stopped; whatever pension he has already drawn, he would refund the same and the period spent by him in military service will count as qualifying service in the civil employment. Accordingly on his retirement from civil employment total military service as well as civil service rendered by him would be clubbed together and pension would be fixed. If the total service counted in this manner comes to more than 33 years, then the period would be restricted to 33 years.

However, what would be the position in case an ex-serviceman opts to continue to draw the military service pension while taking civil employment? No specific provision is made in rule 19. All that it mentioned is that he would continue to draw military service pension. Obviously in such an eventuality his military service is not counted as qualifying service for the purpose of pension in civil employment. Thus if this civil employment is for a period which is less than qualifying period to earn pension, he cannot claim pension on the ground that the period spent by him in military service be counted to make him eligible / qualify for pension in civil employment. What that is the position and period spent by him in military service cannot come to his aid while determining whether such a person qualifies for pension in civil employment how the period spent by him in military service can act to his prejudice and can be counted in determining the maximum qualifying service for the purpose of pension, i.e., for the purpose of fixing the ceiling? Answer has to be in the negative. It may be mentioned that normally a person is not entitled to two pensions except in those cases provided under rules 18 and 19. Thus an exception is carved out for pensions belonging to defence services and a person who rendered military service before taking civil employment or service versa can continue to draw two pensions. When that is the scheme under Pensions Rules, there is no reason, to club the period rendered in two services, if an ex-serviceman opts to draw the military pension. It may be significant to point out that although rule 19 specifically

mentions that if after rendering military service, an ex-serviceman takes up civil employment and opts to cease to draw his pension, his previous military service has to be counted as qualifying service in the civil employment, nothing is stated in rule 19 about counting of such service if he opts to continue to draw the military pension to cap the overall limit of 33 years for pension in civil employment. The learned counsel for the applicant/PWD admitted that this eventuality is not specifically dealt with under rule 19 or any other Rules. However, reliance was placed on the clarification given by Department of Pension and Pensioners Welfare when the case of the petitioner was forwarded to the department for clarification. This clarification, according to me, is not legally correct. **Once the petitioner exercised his option to draw the military pension, then the periods spent by him in military service is totally divorced from the service rendered in civil employment and is not to be taken into consideration for any purpose. The entitlement of the petitioner for pension in PWD has to be on the basis of service rendered in PWD. This can be the only possible construction of rule 19. It may be added here that these Pension Rules are the benevolent provisions for the benefit of employees and even in case of doubt, the interpretation which is beneficial to the employee has to be given**……..” (emphasis supplied).

With regards the contention of the learned Government Pleader that it is only regular service, from the date of the petitioner’s absorption on 1.4.1981, which is to be reckoned for grant of pension, it cannot be lost sight of that G.O.Ms.No.156 dated 29.4.1983 provides to the contrary. It is not in dispute that the petitioner was a full time contingent night watchman from the date of his initial appointment on 7.2.1967, and in accordance with G.O.Ms.No.156 dated 29.4.1983, if his entire service from 7.2.1967 till 31.10.1989 is reckoned then he would have put in more than 20 years of service under the state government. Since G.O.Ms.No.156 dated 29.4.1983 requires the services rendered as a full time contingent employee, prior to his absorption in government service, also to be included as qualifying service, the petitioner would have put in more than 22 years of service under the State Government which is more than the minimum qualifying

service for being granted pension .

The order of the A.P. Administrative Tribunal is therefore set aside. The respondents herein are directed to compute the petitioner's eligibility for pension taking into account his full time contingent service from 7.2.1967 till his superannuation on 31.10.1989. The entire exercise in this regard shall be completed within three months from the date of receipt of a copy of this order and the pensionary benefits payable to the petitioner including arrears thereof, shall be paid to his L.Rs within two months thereafter.

The writ petition is accordingly allowed. However, in the circumstances, without costs.

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B. PRAKASH RAO, J

Date: 22.06.2006

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RAMESH RANGANATHAN, J

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[1] 2001(1) LLN 749